

STATE OF MICHIGAN
IN THE SUPREME COURT

MAJESTIC GOLF, LLC, a Michigan limited
liability company,

Plaintiff/Counter-Defendant/Appellee,

v

LAKE WALDEN COUNTRY CLUB, INC., a
Michigan Corporation,

Defendant/Counter-Plaintiff/Appellant.

Supreme Court No. 145988

Court of Appeals No. 300140

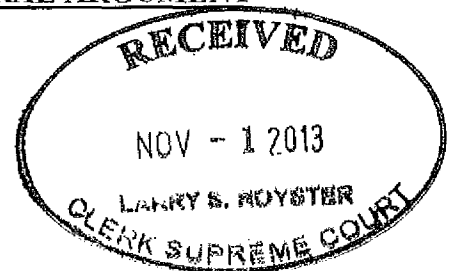
Livingston County Circuit Court No.
09-24146-CZ

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APPELLANT LAKE WALDEN COUNTRY CLUB, INC.'S
CORRECTED BRIEF IN RESPONSE
TO APPELLEE'S SUPPLEMENTAL BRIEF AFTER ORAL ARGUMENT



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ARGUMENT

In its supplemental brief after oral argument, Appellee asserts that the proposed merger between Appellant Majestic Golf, LLC (“Majestic”) and Appellant Lake Walden Country Club, Inc. (“Lake Walden”) would not eliminate the need for the proposed easement, because Majestic’s affiliate and sole member, Waldenwoods Properties, LLC (“Waldenwoods”), was not part of the proposed merger. This argument is misleading. The final form of the merger had not yet been determined in October 2008. Moreover, the alleged default was Lake Walden’s failure to sign a proposed “Consent to Grant of Easement,” not failure to grant an easement. Even if the only parties to the merger were Majestic and Lake Walden, the merger would – at a minimum – eliminate the need for the proposed “Consent,” since Majestic and Lake Walden would be one entity. The proposed easement ran from Majestic, as owner of the property on which the golf course was located, to Waldenwoods, the owner of the property surrounding the golf course. Majestic requested Lake Walden’s “Consent” to the easement because Lake Walden was the lessee of the golf course. See Lake Walden’s Brief on Appeal, pp. 5-8.

Further, Majestic’s new emphasis on the separateness of Majestic and Waldenwoods proves too much. Paragraph 22 of the Lease not only fails to mention either a “Consent” or a roadway easement, see *id.* pp. 33-35, but it obligates Lake Walden to act only for the benefit of the “Landlord,” Majestic.¹ Paragraph 22 requires Lake Walden, as Tenant, to “permit **drainage and utility easements** and **road crossings** to be developed **by Landlord** on the Premises as required to permit development to occur on **Landlord’s** Other Real Estate,” not on real estate owned by a third party. Apx 68a (emphasis added).

¹ Majestic became the Landlord by taking an assignment of the Lease from Waldenwoods. See Majestic’s Brief on Appeal, p. 5.

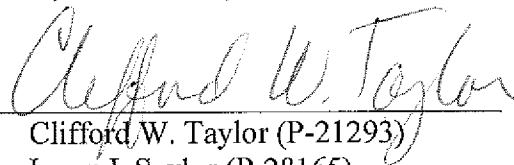
In the spirit of rebuttal argument, Appellant takes this opportunity to further respond to another question from the Chief Justice: whether a roadway easement would be the only possible way to achieve the "road crossing" contemplated by paragraph 22 of the Lease. At oral argument, counsel for Appellant responded that other alternatives were possible, but did not identify them. One alternative would be to simply dedicate the roadway to the Township. See *Kraus v Department of Commerce*, 451 Mich 420, 424; 547 NW2d 870 (1996). Indeed, Majestic's proposed easement recognizes the possibility that the road would eventually be dedicated. See Apx 176a. Another alternative would be to grant a license.² Thus, paragraph 22 of the Lease by its express terms did not obligate Lake Walden to sign a "consent" to an easement for road crossing.

CONCLUSION AND RELIEF REQUESTED

Lake Walden Country Club, Inc. respectfully requests that this Court reverse the decision of the Court of Appeals and remand to the trial court for entry of a judgment for Appellant, or in the alternative for a trial on the remaining issues of material fact.

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² A license can even be granted orally. While an oral license can be revoked at will, see *Kitchen v Kitchen*, 465 Mich 654, 658; 641 NW2d 245 (2002) (citing the statute of frauds, MCL 566.106), revoking a license once granted would presumably breach paragraph 22 of the Lease.

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